THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.8210 of 2006

DATED: 21-04-2006

BETWEEN

Shri Surender Singh Tuteja.

...PETITIONER

AND

The Municipal Corporation of Hyderabad, rep. by its Commissioner, Lower Tank Bund, Hyderabad and others.

...RESPONDENTS

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THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.8210 of 2006

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of respondents 1 and 2 in issuing the notice dated 12-04-2006 under Section 636 of the Hyderabad Municipal Corporation Act, as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondents.

Learned counsel for the petitioner submits that the petitioner is the owner and possessor of the premises bearing Municipal Nos. 3-6-46 to 63, situated at Basheerbagh, Hyderabad and that the respondent No.1 has sanctioned the plan for ground + 6 floors and there is no cellar or stilt floor and that he has constructed the said premises according to the sanctioned plan. He further contends that the respondents, without issuing any show cause notice, issued a notice dated 12.04.2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioner has made unauthorized constructions in cellar/stilt floor and accordingly, he was directed to remove the said unauthorized structures within three days.

Hence, I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioner to remove the structures within three days.

Having regard to the facts and circumstances of the case,
the impugned notice dated 12-04-2006 is directed to be treated as a show cause notice only, permitting the petitioner to file a representation/explanation within one week from the date of receipt of a copy of this order and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondents shall not remove or demolish the premises of the petitioner.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

Dated:21-04-2006

sj